BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TOMMA CELUCH	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 222,711 & 239,619
LUCE PRESS CLIPPINGS, INC.	)	
Respondent	)	
AND	)	
	)	
AMERICAN HOME ASSURANCE COMPANY	)	
and TRAVELERS INSURANCE COMPANY	)	
Insurance Carriers	)	

ORDER

Respondent and Travelers Insurance Company appealed the January 2, 2002 Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on July 16, 2002, in Topeka, Kansas.

APPEARANCES

George H. Pearson of Topeka, Kansas, appeared for claimant. Matthew S. Crowley of Topeka, Kansas, appeared for respondent and American Home Assurance Company. Bret C. Owen of Topeka, Kansas, appeared for respondent and Travelers Insurance Company.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. In addition, at oral argument before the Board, the parties agreed that the transcripts from the hearings on October 8, 1997, July 14, 1998, and September 28, 1999, were also part of the evidentiary record, excluding any medical hearsay.

ISSUES

Docket number 222,711 was filed as a claim for a repetitive use injury to the left upper extremity with an alleged date of accident of April 4, 1997. Docket number 239,619 was filed as a claim for a repetitive use injury to the bilateral upper extremities, neck, and chest with an alleged date of accident of October 13, 1998.

The parties have stipulated that American Home Assurance Company was respondent's insurance carrier from January 1, 1997, through March 1, 1998, and that Travelers Insurance Company began providing respondent with insurance coverage after that period. Consequently, due to claimant's injuries being caused over a period of time by repetitive work activities, the insurance carriers have been unable to agree which carrier should be liable in these claims.

In the January 2, 2002 Award, Judge Avery found that claimant underwent cervical disk surgery in June 1998, but following surgery she returned to work for respondent performing her regular job duties. The Judge determined that claimant's accidental injury was ongoing in nature from the repetitive work activities that she was performing for respondent through the date of Regular Hearing and, therefore, the Judge found the appropriate date of accident for computing claimant's permanent partial disability benefits was June 28, 2001, the date of Regular Hearing. Accordingly, the Judge determined Travelers Insurance Company was responsible for paying claimant benefits for a 17 percent permanent partial general disability, which was based upon claimant's whole body functional impairment rating. The Judge also determined claimant sustained a vocal chord injury during the June 1998 neck surgery and ordered Travelers Insurance Company to pay the medical expenses related to that injury. But the Judge did not address the allocation of any other medical expense incurred by claimant in these claims.

Travelers Insurance Company (Travelers) contends Judge Avery erred by finding the date of accident for claimant's repetitive use injury should be considered the date of the June 28, 2001 Regular Hearing. Travelers argues that there is no evidence that claimant sustained additional permanent injury after 1997 and that Dr. Peter V. Bieri, who was the only medical expert to testify, attributed all of claimant's functional impairment arising from the neck to a 1997 accident, when American Home Assurance Company was the carrier on the risk. Travelers contends the Board should find an accident date for claimant's neck injury to be no later than September 17, 1997, when Dr. K. N. Arjunan evaluated claimant and determined that she required neck surgery. Accordingly, Travelers argues American Home Assurance Company (American Home) has attempted to manipulate the accident date and that American Home should be responsible for the benefits arising from claimant's neck and vocal chord injuries, with Travelers only liable for a 1998 shoulder injury.

Conversely, American Home argues that Dr. Bieri acknowledged that claimant's condition worsened through 1998 due to her work activities and, therefore, the appropriate accident date should be either the date that claimant left work immediately before the June 1998 neck surgery or the date of Regular Hearing. In any event, American Home argues the accident date is outside its coverage period and, therefore, the Award should be affirmed.

Claimant contends the present fight is between the insurance carriers and she is not concerned which carrier pays the award.

The issues before the Board on this appeal are:

1. What is the appropriate date of accident for claimant's repetitive use injuries?

2. What is the responsibility of the insurance carriers in these claims?

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. Claimant began working for respondent in 1984. In her job, claimant scans newspapers looking for the names of clients. The job requires claimant to repetitively move her head, neck, shoulders, arms and hands as she types and flips through 1,900 to 4,000 pages per day. Claimant is a full-time employee and usually works nine-hour days Monday through Friday, plus five hours on Saturdays.

2. In approximately 1995, claimant sought chiropractic treatment for her shoulders and neck. In August 1996, claimant again experienced pain in her neck and shoulders for which she initiated a workers compensation claim. As part of that claim for an August 9, 1996 accident, claimant alleged she developed right carpal tunnel syndrome and on April 22, 1997, she underwent right carpal tunnel release surgery. According to the records of the Division of Workers Compensation, claimant settled that claim with respondent and Fireman's Fund Insurance Company on March 30, 2001.

3. Claimant's right carpal tunnel release surgery occurred six days before April 28, 1997, when claimant filed an application for hearing with the Division of Workers Compensation, alleging an April 4, 1997 accident and injury to the left upper extremity. Claimant testified she believes she sustained an additional work-related injury on that date because her symptoms had worsened. Claimant testified, in part:

> Because the pain had gotten different. It was into the left arm, the shoulder, down into the left -- the first three fingers on my hand had went numb and I was getting severe headaches.[1]
>
> . . .
>
> It [the pain] was everywhere really in the upper extremities and I got the headaches.[2]

According to claimant, in April 1997 the pain progressed in the left shoulder and into the left arm, she was experiencing numbness in the first three fingers of her left hand, her headaches became more severe with pain radiating from her neck into the head and shoulders, and the pain worsened in the right shoulder with increased symptoms in the hand and arm. Claimant selected April 4, 1997, as the accident date as that is the day she could no longer tolerate the pain and the day she believes she reported an injury to her supervisor.

4. Respondent then referred claimant to the company physician, Dr. Robbie Logan, whom claimant had previously seen for her earlier symptoms.

5. As indicated above, claimant underwent right carpal tunnel release surgery on April 22, 1997, and missed several weeks of work. After recovering from surgery, claimant returned to work performing her regular job duties. But in July 1997, claimant returned to Dr. Logan for additional treatment to her neck, shoulders and upper back. At that time, Dr. Logan ordered an MRI on claimant's neck. The MRI indicated claimant had a herniated disk between the fifth and sixth intervertebral cervical levels. After reviewing the results from the MRI, Dr. Logan advised claimant she needed surgery and the doctor referred claimant to a surgeon, Dr. K. N. Arjunan.

6. Claimant first saw Dr. Arjunan on September 17, 1997, and the doctor advised her that surgery was necessary. During this period of time, claimant was continuing to work for respondent and her pain was progressively worsening.

7. Claimant did not receive authority to undergo surgery as there was a dispute over liability between respondent's insurance carriers. Fireman's Fund Insurance Company, who was the insurance carrier on the risk for the August 1996 claim, disagreed with American Home, who was respondent's insurance carrier in September 1997, as to which company was responsible for claimant's neck injury and surgery. To resolve the dispute,

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[1] Regular Hearing, June 28, 2001, at p. 10.

[2] Regular Hearing, June 28, 2001, at p. 11.

claimant requested a preliminary hearing, which was held in October 1997 before Administrative Law Judge Floyd V. Palmer. On October 10, 1997, Judge Palmer issued an Order for Compensation requiring American Home to provide claimant's medical benefits for the alleged April 4, 1997 accident. That Order, which was entered in both docket numbers 214,959 and 222,711, read, in part:

> Under the bright line rule of Berry and Condon and set forth again in Durham, a repetitive use accident and injury occurs the last day worked by the claimant where the cessation of work was due to a repetitive use type of injury. Since claimant has not missed any time from her work due to the neck injury, the date of injury to her neck will be the day that she is taken off work by Dr. Arjunan for surgery, and I so hold. Since all benefits flow from the date of the accident as explained in Kimber, the insurance carrier having coverage on the date of the accident will be responsible for the benefits to be provided. . . . These benefits to be provided by American Home in Docket No. 222,711.

8. Despite being ordered by Judge Palmer, American Home did not promptly authorize surgery. Dr. Arjunan's office advised claimant the doctor would not see her anymore until the bill from the September 1997 visit was paid. While awaiting for American Home's approval to treat with Dr. Arjunan, claimant continued to work for respondent performing her regular job duties and her symptoms worsened. Finally, in March 1998, when she could no longer tolerate her symptoms, claimant, without receiving authorization from American Home, returned to Dr. Arjunan. According to claimant, her neck and shoulder symptoms had continued to worsen while waiting for American Home's authorization. Dr. Arjunan ordered another MRI and afterwards, on June 5, 1998, operated on a herniated disk between the fifth and sixth cervical vertebrae.

9. Following neck surgery, claimant returned to work for respondent performing her regular job duties scanning newspapers. In October 1998, claimant again experienced increased pain. Claimant testified her pain was different at that time as her neck, shoulders and arms hurt worse and her headaches became more frequent. On December 8, 1998, claimant filed another application for hearing with the Division of Workers Compensation in which she alleged an October 13, 1998 work-related accident involving both upper extremities, neck and chest. Claimant testified she selected October 13, 1998, as the accident date as that day she experienced pain which was worse than what she had experienced in a very long time.

10. In October 1998, claimant reported her increased symptoms to respondent and was again referred to the company physician. As Dr. Logan was then gone from the clinic that respondent used, claimant saw Dr. Sankoorikal who referred claimant to physical therapy and ordered a back brace. At the time of the June 28, 2001 Regular Hearing, claimant was

not under any active medical treatment for her work-related injuries. Moreover, claimant was back at work, performing her regular job duties and fulfilling her quotas.

11. Claimant reports her neck surgery did not help and that her symptoms in the neck, shoulders and back of the head have worsened since the surgery. At the Regular Hearing, claimant testified, in part:

> Q. (Mr. Crowley) At the preliminary hearing we held in this matter in October of 1997 you had indicated that your complaints at that time in October of 1997 were the same that you had in 1996 and were the same that you had when you had the MRI done in 1997, is that correct?
>
> A. (Claimant) Yes.
>
> Q. Since that time, has your pain -- have your symptoms become more intense?
>
> A. Yes.
>
> Q. When the pain -- is one of your symptoms pain?
>
> A. Yes.
>
> Q. Has your pain intensified?
>
> A. Yes.
>
> Q. Has the surgery helped at all?
>
> A. I don't believe it has.
>
> Q. Has the pain gotten worse since the surgery?
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> A. It is now, yes.
>
> Q. Did it get better as a result of surgery at any time?
>
> A. I don't believe it did, no.[3]
>
> . . .

[3] Regular Hearing, June 28, 2001, at pp. 47 and 48.

> Q. (Mr. Crowley) Would it be fair to state that all the treatment that you've been provided for any of your complaints that you are alleging here today may have provided some temporary relief, but they have gradually increased since you first began this type of treatment in August of 1996?
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> A. (Claimant) That's correct.[4]

Despite her ongoing symptoms, claimant has not requested any accommodations from respondent and respondent has not offered any. Additionally, claimant has not had much, if any, medical treatment for her neck or shoulders since seeing Dr. Sankoorikal and receiving some physical therapy in late 1998. Claimant did, nevertheless, undergo vocal chord surgery in February 1999 to attempt to treat the right vocal chord paralysis that she experienced as a result of the June 1998 neck surgery.

12. At the Judge's request, claimant saw Dr. Peter V. Bieri in January 2001. From his review of the medical records, Dr. Bieri determined claimant had been having neck and shoulder complaints since February 1995. The doctor opined that claimant developed carpal tunnel syndrome, sustained injury to her neck and developed myofascial shoulder pain from captive positioning and the repetitive use of the upper extremities.

13. Although Dr. Bieri initially testified that the March 1998 MRI indicated claimant's condition had worsened following the July 1997 MRI, the doctor later stated that the only way to really determine that would be to review the actual films, which he did not do.

14. Dr. Bieri attempted to apportion claimant's functional impairment among the three dates of accident that claimant had alleged in her three workers compensation claims involving respondent – August 9, 1996; April 4, 1997; and October 13, 1998. The doctor determined claimant sustained a seven percent whole body functional impairment for the right carpal tunnel syndrome and shoulder impairment attributable to the August 9, 1996 alleged accident. For the April 4, 1997 alleged accident, the doctor found claimant sustained a 17 percent whole body functional impairment for the cervical injury, shoulder impairment and vocal chord injury. Finally, for the October 13, 1998 accident, the doctor determined claimant sustained a one percent whole body functional impairment for a shoulder impairment.

15. Claimant told Dr. Bieri her reported dates of accident were approximate and that her problems generally had progressed from 1995 through the date of his January 2001 evaluation. At his deposition, the doctor was not specifically asked if claimant sustained additional permanent injury or permanent impairment between September 1997, when Dr. Arjunan recommended surgery, and June 1998, when claimant underwent surgery.

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[4] Regular Hearing, June 28, 2001, at pp. 48 and 49. Also see Regular Hearing, volume 2, at p. 58.

Additionally, the doctor was not specifically asked if claimant sustained additional permanent injury or permanent impairment following the June 1998 surgery. But Dr. Bieri did testify, as follows:

> Q. (Mr. Crowley) Now, Doctor, is it my understanding that your opinion on the mechanism of injury is the repetitive work and captive positioning of Ms. Celuch which caused these conditions to appear?
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> A. (Dr. Bieri) Yes, sir.
>
> Q. Given that, her testimony at the regular hearing on Page 44, Ms. Celuch testified that her symptoms increased from 1997 to 1998, and on Page 48 that her symptoms overall have gotten worse. Would that be consistent with your opinion on further injury of Ms. Celuch as long as she worked in that position with Luce Press Clippings?
>
> Mr. Owen: I object to it, I don't see his opinion about further injury.
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> A. Through '97 and '98, let me look here. Yes.[5]

16. Finally, Dr. Bieri stated in his January 3, 2001 medical report that claimant meets the light physical demand level, which "would limit occasional lifting to 20 pounds, frequent lifting not to exceed 10 pounds, and negligible constant lifting." Additionally, according to the doctor, "claimant should retain the ability to relieve captive posture as needed." Despite those limitations, the doctor stated claimant's "restrictions appear to be consistent with her current job description."

CONCLUSIONS OF LAW

The Award should be modified. In addition to the 17 percent whole body functional impairment that claimant sustained for both the neck and the related vocal chord injury, claimant also sustained a one percent whole body functional impairment for injuries to her shoulders. That is the uncontradicted testimony of Dr. Bieri. Accordingly, the Award should be increased to award claimant an additional one percent permanent partial general disability.

The Board concludes claimant should be awarded benefits for two dates of accident. The first date of accident represents the period of accident that claimant sustained repetitive traumas and an overuse injury to her neck. The greater weight of the evidence establishes that claimant sustained injury to her neck each and every workday

[5] Deposition of Dr. Peter V. Bieri, December 5, 2001, at pp. 11 and 12.

through June 4, 1998, the approximate date that she left work to have neck surgery. According to Dr. Bieri, claimant injured her neck by performing repetitive activities at work and by working in a captive position. Although claimant's doctors were aware in July 1997 that she had a herniated disk in her neck as confirmed by the July 1997 MRI and that she needed surgery, claimant continued to work while she awaited approval from American Home for that surgery.

The Board declines to use the date of Regular Hearing as the date of accident as Dr. Bieri did not restrict claimant from performing her present work duties but, instead, the doctor indicated in his January 2001 medical report that claimant's present work duties did not violate her permanent medical restrictions. Moreover, at the time of Regular Hearing, claimant was not missing work due to her injuries and was continuing to meet the quotas placed upon her. In short, the greater weight of the evidence indicates that the last day of work before surgery is the most appropriate date of accident under these facts.

Travelers accuses American Home of manipulating the date of accident for the neck injury as American Home, contrary to Judge Palmer's October 1997 Order for Compensation, neglected to approve Dr. Arjunan to treat claimant until American Home no longer provided workers compensation insurance coverage for respondent. As the appellate courts have formulated various bright line rules for determining the date of accident for repetitive use injuries, the Board is cognizant that the date of accident can now be manipulated. The Board is unaware of any appellate court case which addresses that potential problem. Should any party believe that such manipulation is improper, that party's recourse is to seek the remedies provided under the fraud and abuse statute, K.S.A. 44-5,120.

Because Travelers was respondent's insurance carrier on the last day of work before the June 1998 surgery, Travelers is responsible for paying the 17 percent permanent partial general disability for the neck injury.

Dr. Bieri attributed a one percent whole body functional impairment to claimant's shoulder injuries, which the doctor attributed to the October 1998 alleged accident. Accordingly, Travelers is also responsible for paying the permanent partial general disability benefits for that injury. Again, it is not logical to conclude that claimant continued to sustain additional permanent injury or permanent impairment through the date of Regular Hearing when Dr. Bieri did not restrict claimant from performing her regular job duties when he evaluated her in January 2001 but, instead, found that her present employment did not violate her medical restrictions.

AWARD

WHEREFORE, the Board modifies the Award and concludes claimant is entitled to a 17 percent permanent partial general disability for a June 4, 1998 accident and resulting injury to the neck and, in addition, a one percent permanent partial general disability for an October 13, 1998 accident and resulting injury to the shoulders. Respondent and Travelers are responsible for the permanent partial general disability benefits payable for both accident dates.

Docket No. 222,711

Tomma Celuch is granted compensation from Luce Press Clippings, Inc., and Travelers Insurance Company for a June 4, 1998 accident and resulting disability. Based upon an average weekly wage of $478.53, Ms. Celuch is entitled to receive 14.31 weeks of temporary total disability benefits at $319.04 per week, or $4,565.46, plus 70.55 weeks of permanent partial disability benefits at $319.04 per week, or $22,508.27, for a 17 percent permanent partial general disability, making a total award of $27,073.73, which is all due and owing less any amounts previously paid in this claim.

Docket No. 239,619

Tomma Celuch is granted compensation from Luce Press Clippings, Inc., and Travelers Insurance Company for an October 13, 1998 accident and resulting disability. Based upon an average weekly wage of $479.57, Ms. Celuch is entitled to receive 4.15 weeks of permanent partial disability benefits at $319.73 per week, or $1,326.88, for a one percent permanent partial general disability, making a total award of $1,326.88, which is all due and owing less any amounts previously paid in this claim.

The Board adopts the remaining orders set forth in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of August 2002.

BOARD MEMBER

CONCURRING AND DISSENTING OPINION

We agree that the appropriate date of accident for the neck injury in docket number 222,711 is June 4, 1998, and the appropriate date of accident in docket number 239,619 is October 13, 1998. We also agree that claimant is entitled to receive benefits for a 17 percent permanent partial general disability in docket number 222,711 and a one percent permanent partial general disability in docket number 239,619.

But we disagree with the majority apportioning the respective liability of the insurance carriers based on those accident dates. In our opinion, the Award should be entered jointly and severally against respondent and both insurance carriers.

This is a dispute between insurance carriers, pure and simple. There is no question that claimant sustained injuries during the period that both carriers provided workers compensation coverage to respondent. Despite claimant needing surgery as early as September 1997, American Home failed and neglected to provide claimant with medical treatment as ordered by Judge Palmer and, therefore, was able to manipulate the accident date in these claims. According to the majority, by manipulating the accident date, American Home has successfully escaped all liability for claimant's permanent disability compensation.

The Kansas Supreme Court has long held that, unless specifically provided, the Division of Workers Compensation does not have the authority or jurisdiction to determine the respective liability of two or more insurance carriers.[6] In Hobelman, the Kansas Supreme Court said:

> The Workmen's Compensation Act has as its primary purpose an expeditious award of compensation in favor of an injured employee against all persons who may be liable therefor. The Act does not contemplate that such proceedings should be hampered or delayed by the adjudication of collateral issues relating to degrees of liability of the parties made responsible by the Act for the payment of compensation. Questions of contractual obligations or even equitable considerations may well be involved between the responsible parties which are of no concern to the injured employee. If such questions are involved, they should be resolved by a court in an independent proceeding in which the employee should not be required to participate.[7]

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[6] Hobelman v. Krebs Construction Co., 188 Kan. 825, 366 P.2d 270 (1961).

[7] Hobelman, at 831.

That rule was repeated 29 years later by the Court of Appeals in American States[8] in which the Court stated:

> Unless specifically allowed by statute, insurance companies may not litigate in the workers compensation division their respective liability for an award if the employee's interests are not at issue.[9]

When a worker's physical condition or disability results from the combined effects of multiple injuries, the Award should be entered jointly and severally against the contesting insurance carriers.[10] In Kuhn, the Supreme Court held:

> Under the existing circumstances, the claimant's physical condition having been found to be the result of both accidents, it is our opinion that the trial court should have held both carriers, Reliance and Farmers, jointly and severally liable, leaving the two contesting insurance companies to litigate their grievances against each other in an independent action.
>
> This conclusion accords with the rationale underlying prior decisions of this court. It also serves a primary purpose of the Workmen's Compensation Act, *i.e.*, the compensation of workers injured in industrial accidents with as little delay as possible and without having to wait for the disposition of collateral issues in which they have no interest.[11]

In deciding that the two insurance carriers should litigate apportionment issues in a separate proceeding in district court, the Kansas Supreme Court quoted a California decision for the following:

> In permanent disability cases, the proper procedure is to hold the carriers jointly and severally liable to the employee, leaving the carriers to debate the apportionment issue in a separate proceeding. 'The **successive carriers** or employers should properly have the burden of adjusting the share that each should bear and that should be done by them in an independent proceeding between

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[8] American States Ins. Co. v. Hanover Ins. Co., 14 Kan. App. 2d 492, 794 P.2d 662 (1990).

[9] American States, at 498.

[10] Kuhn v. Grant County, 201 Kan. 163, 439 P.2d 155 (1968).

[11] Kuhn, at 170 and 171.

> themselves. They are in a better position to produce evidence on the subject and establish the proper apportionment.' . . .[12] (Emphasis added.)

It is reasonable to conclude that the repetitive trauma sustained by claimant during the earlier stages of injury when American Home was on the risk contributed to claimant's ultimate injury and disability. Accordingly, similar to Kuhn, claimant's disability is from the combined effects of multiple injuries involving multiple insurance carriers. Therefore, the Award should be entered jointly and severally against both carriers, leaving them to litigate their differences in a separate proceeding.

Indeed, by holding multiple carriers jointly and severally liable in cases such as these, the carriers would lose an incentive to manipulate the accident date. Moreover, injured workers would no longer be caught in the middle of this type of insurance coverage dispute. Comparing the injured worker to "the ham in the sandwich," the Supreme Court in Kuhn stated, in part:

> The present action presents a graphic illustration of the hardship which may confront a claimant where insurance carriers are permitted to litigate, during the compensation process, claims and equities existing between themselves. We deduce from the trial court's judgment, that neither Reliance nor Farmers is now paying any compensation. In addition, claimant has been put to the expense of printing a brief and of employing appellate counsel, for whose necessary expenses he will no doubt be liable.
>
> These are adversities which a claimant should not be forced to undergo. While we recognize the right of insurance carriers to be protected in their legal rights and to engage in litigation when disputes over their respective liabilities arise between them, yet their quarrels should not be resolved at the expense of an injured workman.[13]

To the bewilderment of Travelers, the majority's decision rewards American Home's manipulation of the accident date and American Home's failure to promptly provide claimant with medical treatment. Injured workers are also victims of the majority's decision as insurance carriers now have incentive to delay providing appropriate medical treatment, which in this instance was ordered by the Judge.

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[12] Kuhn, at 171.

[13] Kuhn, at 171 and 172.

BOARD MEMBER

BOARD MEMBER

DISSENT

We would affirm the Administrative Law Judge's finding of accident date. Claimant suffered repetitive traumas each and every working day. Her job duties never changed, and except for a brief period when she worked fewer hours after her surgery, she was never accommodated. Accordingly, claimant continued to perform the offending work activity. Of course, this is explained by the lack of restrictions from a physician. The facts in this case do not fit within the facts of either Berry[14] or Treaster,[15] and none of the triggering events mentioned in those cases has occurred. Nevertheless, our appellate courts' preference for finding a single accident date is clear. Because the Regular Hearing marks the point at which claimant represents herself as having reached maximum medical improvement and the point when the parties represent to the court that the case is ripe for final award, the last date claimant worked before the Regular Hearing should be the cut-off date for the offending work activity and fix the date of accident. We otherwise agree with the majority's findings and conclusions.

BOARD MEMBER

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and American Home
Bret C. Owen, Attorney for Respondent and Travelers
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

[14] Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

[15] Treaster v. Dillon Companies, Inc., 267 Kan. 610, 987 P.2d 325 (1999).